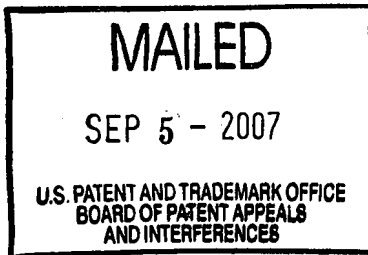


UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte Lepage et al.

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Application No. 09/205,318  
Appeal No. 2006-0134

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**DECISION ON PETITION**

This is a decision on the combined “Petition to Suspend the Rules Under 37 C.F.R. § 1.183 and Petition for Extension of Time Under 37 C.F.R. § 1.136(b)” (Petition), filed December 12, 2005. The Petition requests that “Applicants be granted a suspension of the rules under 37 C.F.R. § 1.183 and a waiver of the filing requirements under 37 C.F.R. § 1.136(b).” Since jurisdiction over this application currently resides with the Board of Patent Appeals and Interferences (Board), 37 C.F.R. § 41.35, the Petition will be treated as a petition to the Chief Administrative Patent Judge under 37 C.F.R. § 41.3.

**FINDINGS OF FACT**

1. On April 14, 2004, the Board remanded this application to the examiner for reconsideration of a rejection under 35 U.S.C. § 251 in light of *Ex parte Eggert*, 67 USPQ2d 1716 (Bd. Pat. App. & Int. 2003).
2. On May 27, 2005, Appellants filed a Power of Attorney, changing their counsel.

3. On June 8, 2005, the Office mailed a Supplemental Examiner's Answer to Appellants' previous counsel.
4. Appellants' previous counsel forwarded the Supplemental Examiner's Answer to Appellants' present counsel in a timely manner.
5. Through inadvertence, Appellants' present counsel, and specifically the docketing department of Appellants' counsel, failed to properly docket that a response to the Supplemental Examiner's Answer was due within two months from the mailing date of the Supplemental Examiner's Answer, or by August 8, 2005. 37 C.F.R. § 41.50(a)(2) (Rule 41.50(a)(2)).
6. On November 1, 2005, Appellants' present counsel was made aware of the docketing oversight by the Assignee of the application.
7. On December 12, 2005, Appellants filed "Appellants' Reply Brief Pursuant to 37 C.F.R. § 41.50" along with the Petition.

### **DISCUSSION**

Rule 1.183 specifies that:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(f).

As noted above, Rule 41.50(a)(2) specifically requires that:

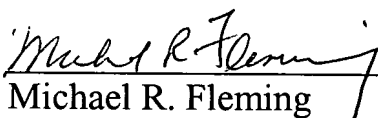
If a supplemental examiner's answer is written in response to a remand by the Board for further consideration of a rejection pursuant to paragraph (a)(1) of this section, the appellant must within two months from the date of the supplemental

examiner's answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding ...

Appellants have admitted that through the inadvertence of their counsel's docketing department this filing deadline was not met, but other than the conclusory allegation of inadvertence have offered no evidence or other reason for seeking a suspension of the rule. Specifically, Appellants have not pointed to any evidence or reason why the pertinent facts present an extraordinary situation in which the interest of justice compels suspension of the rule.

### **DECISION**

In view of the lack of an adequate showing for suspending application of the filing deadline requirement of Rule 41.50(a)(2), the Petition is **DENIED** without prejudice to the filing of a renewed petition within two weeks from the mailing date hereof.



Michael R. Fleming  
Chief Administrative Patent Judge  
Board of Patent Appeals and Interferences

Application 09/205,318  
Appeal No. 2006-0134

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